



IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Cavello, et al.

Application No.: 10/728,674

Filing Date: 12/05/03

Title: Swivel Support Base Apparatus

Confirmation No.: 9081

Examiner: Sterling, Amy Jo

Group Art Unit: 3632

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 06/01/05.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable).

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

() one month	\$120.00
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() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Typed Name: Marianne Boland

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Respectfully submitted,

Cavello, et al.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Cavello, et al.

Serial No.: 10/728,674

Filed: December 5, 2003

For: **SWIVEL SUPPORT
BASE APPARATUS**

Confirmation No.: 9081

Group Art Unit: 3632

Examiner: **Sterling, Amy Jo**

HP Docket No. 200314581-1

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on

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APPEAL BRIEF UNDER 37 C.F.R. §1.192

Mail Stop Appeal Brief - Patents:
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is an appeal from the decision of Examiner Amy Jo Sterling, Group Art Unit 3632, of July 7, 2005 (Part of Paper No./Mail Date 20050302), rejecting claims 1-14 in the present application and making the rejection FINAL.

I. REAL PARTY IN INTEREST

The real party in interest of the instant application is Hewlett-Packard Development Company, a Texas Limited Liability Partnership having its principal place of business in Houston, Texas.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

Claims 1-14 are pending in the present application.

IV. STATUS OF AMENDMENTS

No amendments have been made or requested since the mailing of the FINAL Office Action and all amendments submitted prior to the FINAL action have been entered. A copy of the currently pending claims is attached hereto as Appendix, section IX.

V. SUMMARY OF THE INVENTION

The present invention is generally directed to a swivel support base apparatus. With regard to independent claim 1, and with reference to FIGs. 1-3B and pages 2-6 of the specification, the apparatus 110 includes a frame (205), a swivel mechanism (200, *e.g.*, 200a and 200b), and secondary feet (220a-d). The apparatus can provide support for products, such as displays, organizers, devices, furniture, *etc.* with the ability to swivel (*e.g.*, rotate left and right). In general, the swivel mechanism (200) is disposed at the bottom of the support base frame (205). The swivel mechanism (200) includes a foot (202) that has a no-

slip pad in contact with the supporting surface, such as a desktop or floor. The no-slip pad can be comprised of a material that provides a defined frictional coefficient (e.g., coefficient of friction) to prevent or hinder translational motion across the supporting surface, and is located in-line with the center of gravity of the supported product. Exemplary materials for the foot (202) include elastomeric materials such as rubber (e.g., urethane rubber, silicon rubber, *etc.*), or cork, among other materials that provide a resistance to slippage of a supported workstation 100. When force is applied to the supported product at either side of the centerline of an axis defined by the foot (e.g., as if rotating a desktop display screen to provide a better view of the screen), the supported product easily rotates around the foot axis of rotation. However, when force is applied directly at the axis of rotation defined by the foot (e.g., as if to push or slide the desktop product across the supporting surface), slippage on the supporting surface is prevented or substantially impaired. The secondary feet (220a-d) are connected to the frame (205) and disposed in locations surrounding the swivel mechanism (200). The secondary feet 220a-d are located to provide stability to the supported product and are located in positions towards the periphery of the apparatus 110. The secondary feet (220a-d) each have a pad of a lower frictional coefficient than the foot pad. Thus, the secondary feet pads are configured with a material that enables rotation of the frame (205) when supporting a device on the frame.

With regard to dependent claim 2, the swivel mechanism (200) includes a disk (204) connected to the foot (202), as shown in and discussed [paragraph 00013 and 00014 on pages 4 and 5] in association with FIG. 3A.

With regard to dependent claim 3, the foot (202) is fixably attached to the disk (204) as shown in and discussed [paragraph 00014 on page 5] in association with FIG. 3A.

With regard to dependent claim 4, the foot (202) is detachable from the disk (204)

as described in paragraph [00014] of page 5.

With regard to dependent claim 5, the swivel mechanism (200) includes an axle (208) in contact with the disk (204) and secured to the frame (205) with a screw head (112), as shown in and discussed [paragraph 00013 on page 4] in association with FIG. 3A.

With regard to dependent claim 6, the axle (208) is fixably attached to the disk (204), as shown in and discussed [paragraph 00015 on page 5] in association with FIG. 3A.

With regard to dependent claim 7, the axle (208) is configurably coupled to the disk (204) and rotatable with respect to the disk (204), as shown in and discussed [paragraph 00015 on page 5] in association with FIG. 3A.

With regard to dependent claim 8, the swivel mechanism (200) includes a spring (206) at least partially surrounding the axle (208), the spring (206) supporting the frame (205), as shown in and discussed [paragraphs 00016 and 00017 on pages 5 and 6] in association with FIG. 3A.

With regard to dependent claim 9, the secondary feet (220a-d) are designed to share a load imposed upon the frame (205) with the foot (202), as shown in and discussed [paragraph 00017 on page 5] in association with FIG. 3A.

With regard to dependent claim 10, the foot (202) supports the majority of the load, as shown in and discussed [paragraph 00017 on page 5] in association with FIG. 3A.

With regard to dependent claim 11, the apparatus (110) includes the device (102 and 104) disposed on the frame (205), as discussed in [paragraph 0008 on page 2].

With regard to dependent claim 12, the device includes a computer display monitor (102), as shown in and discussed [paragraph 00010 on page 3] in association with FIG. 1.

With regard to dependent claim 13, the material of the secondary feet pads include at least one of an elastomeric material and cork, as discussed in [paragraph 00012 on page

4].

With regard to dependent claim 14, the material of the foot pad includes at least one of an elastomeric material and cork, as discussed in [paragraph 00012 on page 4].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-14 are pending in the application. The FINAL Office Action mailed March 7, 2005, rejected claims 1-7, 9-12 under 35 U.S.C. §102(b) as being anticipated by *Janda* (“*Janda*,” U.S. Pat. No. 3,854,404). Claims 1, 13, and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Branch* (“*Branch*,” U.S. Pat. No. 2,264,128). Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Janda* in view of *Paskiewicz* (“*Paskiewicz*,” U.S. Pat. No. 6,467,746).

A response after final mailed on April 22, 2005, requested reconsideration of the rejections to claims 1-14. An Advisory Action mailed on May 17, 2005, indicated that the request for reconsideration was considered but did not place the application in condition for allowance. For the reasons set further herein, Applicants respectfully request that these rejections be overturned.

VII. ARGUMENT

A. Discussion of Independent Claim 1 and Corresponding Dependent Claims 2-7, 9-12

Applicants’ independent claim 1 describes a swivel support base apparatus.

Specifically, claim 1 provides (emphasis added):

1. An apparatus, comprising:

a frame;

a swivel mechanism, said swivel mechanism including a foot having a foot pad of a defined frictional coefficient in contact with a support surface,
the foot pad configured with a material that enables rotation of the frame

and impedes translational movement of the foot; and
secondary feet connected to the frame and disposed in locations surrounding the swivel mechanism, said secondary feet each having a pad of a lower frictional coefficient than the foot pad, wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame.

Applicants respectfully submit that *Janda* fails to disclose all of the above emphasized features. For instance, *Janda* does not disclose a *foot pad* that is ***configured with a material that enables rotation of the frame and impedes translational movement of the foot***, as recited in independent claim 1. The Office Action equates the bottom of a gear reduction unit 44 with a “foot pad.” Assuming for the sake of argument this is a valid comparison, which it is not, it is not the material of the gear reduction unit that enables rotation of the frame. Further, it is not the material of the gear reduction unit that impedes translational movement of what the Office Action calls the “foot” (the bottom of the gear reduction unit). Instead, it appears that the entire drive unit 46 is “affixed to and supported on the base 12” (col. 2, lines 44-45), and thus it appears that the impediment to translational movement is by virtue of the means used to affix the drive unit 46 to the base 12, and not the material used.

The Advisory Action simply refutes this argument by stating that “*Janda* does has foot pad, the material of which would render the device capable of being rotated, and impedes translational movement of the device,” and further states that the “argument that *Janda* does not teach a foot because it is not shaped as a foot is unpersuasive, a foot may be any end of a furniture device including the secondary feet of casters.” Applicants disagree that this is an argument about the shape of a foot, but rather, an argument about construing simple claim language according to their ordinary meaning. Further, the above-described discussion explains that it is not the material that impedes translational movement of the device, despite the conclusory statements in the last Advisory Action to the contrary. For

at least the reason that *Janda* fails to disclose the emphasized claim features, Applicants respectfully request that the rejection to independent claim 1 be overturned.

Additionally, Applicants respectfully submit that the Office Action is not construing claim terms in accordance with their ordinary meaning, which is improper under MPEP 2111.01 (8th Edition, Revision 2). This section of the MPEP cites *Chef America, Inc. v Lamb-Weston, Inc.*, 358 F.3d 1371, 69 USPQ2d 1857 (Fed. Cir. 2004) for the rule of law that “[o]rdinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.” For example, the Office Action is unclear as to what in *Janda* constitutes a “swivel mechanism.” Assuming it is the combination of the drive plate 38 and drive shaft 40, such a combination would imply a purposeful, controlled movement when driven by the electric motor 42. *Janda* supports this implication by disclosing (in col. 2, lines 32-37) that the “[D]rive plate 38 is affixed to and rotatable with a drive shaft 40 driven by an electric motor 42 through a gear reduction unit 44 which reduces the speed of the motor 42 so that the drive plate 38 is rotated at a very slow speed such as one-half revolution per minute.” One ordinary meaning of the term “swivel” may be found in Webster’s on-line dictionary, which provides (emphasis added) that a swivel is “a device joining two parts so that one or both can pivot freely (as on a bolt or pin).” Applicants respectfully submit that the drive plate 38 in *Janda* does not appear to pivot freely, but in fact appears to pivot in a controlled manner.

The Advisory Action states that “the meaning of Swivel meaning controlled movement is narrower than claimed.” Applicants disagree. As described above and in the last response, Applicants have simply pointed out that the common ordinary usage of the term “swivel” refers to pivoting freely, not controlled, the latter of which would be the necessary

meaning prescribed by the interpretation used in the final Office Action. In other words, it is the Office Action that attempts to define a claim term contrary to its ordinary meaning. Thus, *Janda* fails to disclose a “swivel mechanism” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be overturned.

As another example of misconstruing of claim terms according to their ordinary meaning, the Office Action equates a gear reduction unit (44) to a “foot,” as recited in claim 1. Again, as another example of one exemplary, ordinary meaning for the term “foot,” Webster’s on-line dictionary defines a “foot” as “something resembling a foot in position or use: a: as the lower end of the leg of a chair or table.” In other words, there is an implication of support in this definition. Importantly, *Janda* provides (in col. 2, lines 65-68) that “[T]he dimensions of the unit are so designed that none of the weight of the deck 10 or the object which it supports will be exerted on the drive plate 38 or any portion of the drive unit 46.” Thus, *Janda* fails to disclose a “foot,” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be overturned.

Another example of misconstruing of claim terms according to their ordinary meaning is found in the Office Action equating a “foot pad” as recited in claim 1 with the bottom of the gear reduction unit 44. Assuming the gear reduction unit 44 could be a “foot” for the sake of argument, to call the bottom of the gear reduction unit a “pad” is nonsensical. Referring again to Webster’s as one example definition for a “pad,” one definition given is “a thin flat mat or cushion.” Although there is no intent to limit the definition to a “flat” or “thin” mat or cushion, by no stretch of the imagination can one construe the bottom of the gear reduction unit as a mat or cushion. Thus, *Janda* fails to disclose a “foot pad” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be overturned.

Another example of misconstruing of claim terms according to their ordinary meaning is found in the Office Action equating “secondary feet” to brackets and “pads” to casters 28.

Using Webster’s definition for a “foot” as one example definition, the brackets are not something resembling a foot in position or use since they are disposed between the deck and the casters (*i.e.*, not in a “foot” position). Also, equating “casters 28” to “pads” is simply a clear example of not construing a claim term according to its ordinary meaning, as a caster is clearly not a thin, flat (or otherwise) mat or cushion. Thus, *Janda* fails to disclose “secondary feet” and “pads” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be overturned.

For at least the foregoing reasons, independent claim 1 is allowable over *Janda*, and thus the rejection of claim 1 should be overturned. Since claims 2-7, 9-12 are dependent on independent claim 1, Applicants respectfully submit that the rejection to dependent claims 2-7, 9-12 should be overturned for at least the reason that the dependent claims 2-7, 9-12 contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Additionally, Applicants respectfully submit that the dependent claims are allowable on separate, independent grounds. For instance, with regard to claims 9 and 10, *Janda* does not disclose “wherein said secondary feet are designed to share a load imposed upon the frame with the foot,” as recited in claim 9 (emphasis added), or “wherein the foot supports the majority of the load,” as recited in claim 10 (emphasis added). As discussed in association with independent claim 1, the load in *Janda* is fully supported by the casters (*i.e.*, there is no load sharing) (see col. 2, lines 60-67), and not by the foot. Thus, Applicants respectfully request that the rejections to claims 9 and 10, which incorporate the features of independent claim 1, be overturned.

Another example may be found with respect to claim 12. In particular, *Janda* does not disclose “wherein the device includes a computer display monitor,” as recited in claim 12 (emphasis added). The Office Action asserts that automobiles contain computer displays. Applicants respectfully traverse this apparent finding of well-known art and submit that the subject matter noted above should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support the conclusions, as required. The Manual of Patent Examining Procedure (MPEP) defines the standard for taking official notice. As provided in MPEP § 2144.03:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

If applicant adequately traverses the examiner’s assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

For instance, Applicants do not understand what the Office Action considers a computer display, but respectfully submit that a “computer display” is not necessarily the same as a “computer display monitor,” as recited in claim 12, which has a well-understood meaning to those having ordinary skill in the computer arts (*e.g.*, a cathode ray tube (CRT) device).

Accordingly, Applicants traverse the Examiner's use of official notice. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the official notice determination.

For at least the forgoing reasons, the rejection to claims 1 and 2-7, 9-12 should be overturned.

B. Discussion of Independent Claim 1, and Dependent Claims 13 and 14

Applicants' independent claim 1 describes a swivel support base apparatus.

Specifically, claim 1 provides (emphasis added):

1. An apparatus, comprising:

a frame;

a swivel mechanism, said swivel mechanism including a foot having a foot pad of a defined frictional coefficient in contact with a support surface, the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot; and

secondary feet connected to the frame and disposed in locations surrounding the swivel mechanism, said secondary feet each having a pad of a lower frictional coefficient than the foot pad, *wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame.*

Applicants respectfully submit that *Branch* fails to disclose the above emphasized features. In particular, *Branch* does not disclose *wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame*, as recited in claim 1. In contrast, *Branch* provides (first column, lines 8-10) that an object of the invention "is to provide such a board which cannot be rotated accidentally while in use." (Emphasis added). In column 2, starting at line 27, *Branch* provides (with emphasis added) that the board "is naturally pushed down to compress the suction cup 12 and thus press the knobs 1 firmly into contact with the supporting surface. This prevents the board from either

slipping or rotating with respect to the supporting surface during use.” For at least the reason that *Branch* does not disclose the emphasized claim features, Applicants respectfully request that the rejection to independent claim 1 be overturned.

For at least the foregoing reasons, independent claim 1 is allowable over *Branch*, and thus the rejection of claim 1 should be overturned. Since claims 13-14 are dependent on independent claim 1, Applicants respectfully submit that the rejection to dependent claims 13-14 should be overturned for at least the reason that the dependent claims 2-7, 9-12 contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

C. Discussion of Dependent Claim 8

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office (“USPTO”) has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant’s disclosure.

In the present case, the proposed combination fails to disclose, teach, or suggest the claimed features. In particular, *Janda* does not disclose a *foot pad* that is *configured with a material that enables rotation of the frame and impedes translational movement of the foot*, as recited in independent claim 1. Likewise, and as discussed in a previous Response (dated December 27, 2004), nothing in *Paskiewicz* indicates that the bearing plate (equated in the previous Office Action to a “foot”) includes “*a foot pad* of a defined frictional coefficient in contact with a support surface, the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot,” as recited in independent claim 1. Because these claim features are incorporated into dependent claim 8, and since the proposed combination fails to meet these explicit claim features, Applicants respectfully submit that claim 8 is allowable over the proposed combination and that the rejection should be overturned.

Additionally, through the misconstruing of claim terms, *Janda* fails to disclose claim features and *Paskiewicz* fails to remedy these deficiencies. For example, *Janda* fails to disclose “secondary feet” and secondary feet “pads.” As described in the previous Response, *Paskiewicz* discloses casters (230) that the Office Action equates to “secondary feet.” However, the casters disclosed in *Paskiewicz* also do not include “pads.” Thus, Applicants respectfully request that the rejection to claim 8, which incorporates the features of claim 1, be overturned.

It is interesting to note that the Office Action equated casters in *Paskiewicz* to “secondary feet,” but in *Janda*, equates casters to “pads.” This inconsistency in application further exemplifies the need to construe claim terms according to their ordinary meaning.

In summary, it is Applicants’ position that a *prima facie* for obviousness has not been

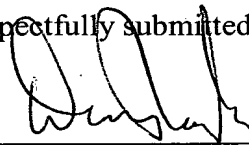
made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the proposed combination and that the rejection of these claims should be overturned.

VIII. CONCLUSION

Based upon the foregoing discussion, Applicants respectfully request that the Examiner' s final rejection of claims 1-14 be overruled by the Board, and that the application be allowed to issue as a patent with all pending claims 1-14.

Please charge Hewlett-Packard Company' s deposit account 08-2025 in the amount of \$330 for the filing of this Appeal Brief. No additional fees are believed to be due in connection with this Appeal Brief. If, however, any additional fees are deemed to be payable, you are hereby authorized to charge any such fees to deposit account No. 08-2025.

Respectfully submitted,



David Rodack
Reg. No.: 47,034

IX. CLAIMS - APPENDIX

1. An apparatus, comprising:
a frame;
a swivel mechanism, said swivel mechanism including a foot having a foot pad of a defined frictional coefficient in contact with a support surface, the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot; and
secondary feet connected to the frame and disposed in locations surrounding the swivel mechanism, said secondary feet each having a pad of a lower frictional coefficient than the foot pad, wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame.
2. The apparatus of claim 1, wherein the swivel mechanism includes a disk connected to the foot.
3. The apparatus of claim 2, wherein the foot is fixably attached to the disk.
4. The apparatus of claim 2, wherein the foot is detachable from the disk.
5. The apparatus of claim 2, wherein the swivel mechanism includes an axle in contact with the disk and secured to the frame with a screw head.
6. The apparatus of claim 5, wherein the axle is fixably attached to the disk.

7. The apparatus of claim 5, wherein the axle is configurably coupled to the disk and rotatable with respect to the disk.
8. The apparatus of claim 2, wherein the swivel mechanism includes a spring at least partially surrounding the axle, the spring supporting the frame.
9. The apparatus of claim 1, wherein said secondary feet are designed to share a load imposed upon the frame with the foot.
10. The apparatus of claim 9, wherein the foot supports the majority of the load.
11. The apparatus of claim 1, wherein the apparatus includes the device disposed on the frame.
12. The apparatus of claim 11, wherein the device includes a computer display monitor.
13. The apparatus of claim 1, wherein the material of the secondary feet pads include at least one of an elastomeric material and cork.
14. The apparatus of claim 1, wherein the material of the foot pad includes at least one of an elastomeric material and cork.

X. EVIDENCE - APPENDIX

(None)

XI. RELATED PROCEEDINGS - APPENDIX

(None)